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NORTHERN DISTRICT OF CALIFORNIA

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Raynell Carmichael, D-25366  
San Quentin State Prison-2N-1-L  
San Quentin, CA. 94974

In Propria Persona

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CW

Raynell Carmichael  
PLAINTIFF,

CV 07

5622

(PR)

VS.

MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR A TRO AND PRELIMINARY  
INJUNCTION

James E. Tilton, et al.,  
DEFENDANTS,

Statement of the Case

This is a civil rights action brought under 42 U.S.C. § 1983 by a prisoner incarcerated at San Quentin state Prison whose has a Metabolic Bone disease who is presently being denied appropriate adequate medical care that is a specific recommendation by an Endocrinologist Dr. Madrilejo MD. on April 26, 2007, to be seen by a Bone Metabolism Expert, another Endocrinologist Dr. O'connor, MD. on May 25, 2007, recommendation that I be seen by a Rheumatology specialist, and once again this request was repeated on August 24, 2007 to be seen by an Rheumatology and a GI-Gastrointestinal consult, as of this date October 17, 2007, No such referral has occurred. The plaintiff seeks a temporary restraining order and a preliminary

1 injunction to ensure that he receives proper medical care.  
2

3 Statement of Facts  
4

5 As stated in detail within the declaration submitted and attached  
6 with this motion, The plaintiff was untreated and not diagnosis  
7 for over 2½-plus years now partially known as an Metabolic Bone  
8 Disease due to an Vitamin D-deficenay, Osteomalacia soft Bones,  
9 Osteopenia Brittle Bones, Superimposed Osteoarthritis rampant  
10 degeneration. Bone diseas Mottled Lesion infiltrated in Multiple  
11 sites with in bones, Neck, Spine, Left shoulder & elbow, spreading  
12 to right shoulder Elbow & Thumb. Hip, Pelvies , right Knee, left  
13 knee & ankle, Dr. Michael Scott, was the First one to respond in  
14 May 2006, to the H-high out of Range Elevated Alkaline Phosphatase,  
15 to find out the cause at ane point it was leaning towards Multiple  
16 Myeloma-Bone Cancer, over time and up to this in time plaintiff was  
17 recommeded by tow Endocrinologist , that I be seen by an Bone  
18 Metablism Expert on August 26, 2007, Dr. Madrilejo, MD. & Dr.O'Connor  
19 MD. May 25, 2007, & August 24, 2007, tthat I be seen by an  
20 Rheumatogical specialist, and a GI-gastrointinl. The physician who  
21 treated me directed the defendants at San Quentin. It has been a  
22 total of up to 6-plus months and the defendants have not provided  
23 plaintiff with any consultation with the qualified to asses the  
24 true cause of the Elevated Alkaline phoshatase and treat my condition.  
25 The plaintiff is experiencing continued pain, stiffness, muscles  
26 cramps, and limited motion in siting down, stnading up from a chair,  
27 getting in and out of bed even shifting around in bed from side to  
28 side ETC., and walking with the aid of a cane, Morbidity Impaired.

1 The defendants against whom relief is sought are, respectively,  
2 the prison Chief Medical Officer-Dr. Rene Kanan, MD.who is  
3 responsible for arranging specialized medical care that scheduler  
4 who is responsible for getting Inmates to their outside medical  
5 appointment,

6  
7 **ARGUMENT**

8 **POINT 1:**

9 THE PLAINTIFF IS ENTITLED TO TEMPORARY RESTRAINING ORDER AND A  
10 PRELIMINARAY INJUNCTION

11  
12 In determining whether a party is entitled to a temporary  
13 restraining order or a preliminary injunction, courts generally  
14 consider several factors; Whether the party will suffer irreparable  
15 injury, the "Balance of hardships" between the parties, the likelihood  
16 lihood of success on the merits, and the public interest. Each of  
17 these factors favors the grant of this motion.

18  
19 A. The plaintiff is threatened with irreparable harm.

20  
21 The plaintiff alleges that he has been denied care for a serious  
22 medical need contrary to physician's instruction, such conduct by  
23 prison officials is a clear violation of the Eighth Amendment.  
24 Estelle V. Gamble, 429 U.S. 97, 105, 97 S.Ct. 285 (1976) (noting that  
25 "intentionally interfering with the treatment once prescribed" is a  
26 form of unlawful deliberate indifference); See also case cited in  
27 § C of this point.

1 As a matter of law, the continuing deprivation of constitutional  
 2 rights constitutes irreparable harm. The loss of constitutional  
 3 rights, even for short periods of time, constitutes irreparable  
 4 injury. *Elrod V. Burns*, 427 U.S. 347, 373, 96 S Ct. 2673 (1976).  
 5 This principle has been applied in prison litigation generally, see  
 6 *Newson V. Norris*, 88F. 2d 371, 378 ( 6th Cir. 1989); *Mitchell V.*  
 7 *cuomo*, 748 F.2d 804, 806 (2d Cir. 1984); *Albro V. County of onondaga*,  
 8 *N.Y.*, 627 F. Supp.1280, 1287 (N.D.N.Y. 1986); *Williams V. Lane*, 646  
 9 *F. Supp.*1379, 1409 (N.D.III.1989), *aff'd* 851 F.2d 867 (7th Cir. 1988),  
 10 *Cert. denied*, 109 S.Ct.879 (1989), and specifically in prison medical  
 11 care cases. *Phillips V. Michigan Dept. of corrections*, 731 F. Supp.  
 12 792, 801 (W.D.Mich. 1990), *aff'd*, 932 F.2d 969 (6th Cir.1991).

13  
 14 In addition, the plaintiff is threatened with irreparable harm.  
 15 because of the nature of my Metabolic Bone disease, the all ready  
 16 mottled lision shown in the whole body scan done at Novato Community  
 17 Hospital on July 7, 2006, that the disease as infiltrative to Multiple  
 18 sites possible Permanet damage irreversible damage has all ready  
 19 been done. If I don't receive proper treatment at the proper time,  
 20 I may Never be normal again.

21  
 22 B. The balance of hardships favors the plaintiff

23  
 24 In deciding whether to grant TRO'S any preliminary injunction,  
 25 courts ask whether the suffering of the moving party if the motion  
 26 is denied will outweigh the suffering of the non-moving party if the  
 27 motion is granted. See, e.g., *Mitchell V. Cuomo*, 748 F. 2d 804, 808  
 28 (2d Cir. 1984) (holding that dangers posed by prison crowding out

weighed state's financial and administrative concerns); Duran V. Anaya, 642 F. Supp. 510, 527 (D.N.M.1986) (holding that prisoner's interest in safety and medical care outweighed state's interest in saving money by cutting staff).

In this case, the present suffering of the plaintiff and his potential suffering if the damage all ready done is irreversible the continue delays and denial will be enormous. The "suffering" the denfendants will experience if the court grants the courts will consist of taking the plaintiff to a suitable doctor and the carrying out the doctor's orders---something that the denfendants do, and are obligated to do, for members of the prison population on a daily basis. the defendant's hardship amounts to more than business as usual.

C. The plaintiff is likely to succed on the merits.

The plaintiff has a great liklihood of success on the merits. what defendants have done--"intentionally interfering with [Medical] treatment once prescribed"--was specifically singled out by the supreme court as an example of unconstitutional "deliberate indifference" to prisoner's medical needs. Estelle V. Gamble, 429 U.S. 97, 105, 97 S. Ct. 285 (1976). Many other courts have held that the failure to carry out physician's orders in unconstitutional. see, e.g., Aswegan V. Bruhl, 965 F. 2d 676, 677-78 (8th Cir.1992)(repeated failures to provide medications timely); Hill V. Marshall, 962 F.2d 1209, 1213-14 (6th Cir 1993); Dace V. Solem, 858 F.2d 385, 387-88 (8th Cir.1988) failure of prison doctors to carry out surgey



1 scheduled before plaintiff's incarceration); Washington V. Dugger,  
2 860 F.2d 1018, 1021 (11th cir. 1988) (failure to return patient to  
3 V A Hospital for treatment for agent orange exposure); LaFaut V. Smith  
4 834 F.2d 389, 393-94 (4th Cir.1987)(failure to provide rehabilitation  
5 therapy recommended by orthopedic specialist).

6  
7 D. The relief sought will serve the public interest.

8  
9 In this case, the grant of relief will serve the public interest  
10 because it is always in the public interest for prison officials to  
11 obey the law Duran V. Anaya, 642 f. Supp. 510, 527 (D.N.M.1986) C'  
12 Respect for law, particularly by officials responsible for the  
13 administration of the state's correctional system, is in itself a  
14 matter of the highest public interest."); see also Llewelyn V Oakland  
15 County prosecutor's office, 402 F.Supp.1379, 1393 (E.D.Mich.1975)  
16 ('the constitution is the ultimate expression of the public interest').

17  
18 POINT II

19  
20 THE PLAINTIFF SHOULD NOT BE REQUIRED TO POST SECURITY.

21  
22 Usually a litigant who obtains interim injunctive relief is asked  
23 to post security. Rule 65 (c), Fed.R.Cir.P. However, the plain  
24 plaintiff is an indigent Inmate and is unable to post security. The  
25 court has discretion to excuse an impoverished litigant from posting  
26 security. Orantes-Hernandez V. F. Supp. 112, 140 (D.Ga.1976), Rev'd  
27 on other grounds, 442 U.S. 584, 99 S.Ct.2493 (1979). in view of the  
28 serious medical danger confronting the plaintiff, the court should

1 grant the relief requested without requiring the posting of security.  
2

3 CONCLUSION  
4

5 For the forgoing reason, the court should grant the motion in its  
6 entirety.  
7

8 Respectfully Submitted this 30 ,day of October ,2007,  
9

10 /s/ Raynell Carmichael  
11 Raynell Carmichael, D-25366  
12 San Quentin State Prison-2N-1-L  
San Quentin, CA.94974

13 In Propria Persona  
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